

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MARK PHILLIP SCHMIDT,  
 Plaintiff,

vs.

COMMISSIONER OF SOCIAL SECURITY,  
 Defendant.

Case No. 2:15-cv-02001-GMN-CWH

**ORDER**

Presently before the Court is Plaintiff's Application to Proceed *In Forma Pauperis* (ECF No. 1), filed on October 16, 2015.

**I. *In Forma Pauperis* Application**

Plaintiff has submitted the declaration required by 28 U.S.C. § 1915(a) showing an inability to prepay fees and costs or give security for them. Accordingly, Plaintiff's request to proceed *in forma pauperis* will be granted.

**II. Screening the Complaint**

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watson v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes *pro se* civil rights complaints and may only dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th

1 Cir. 2014) (quoting *Iqbal*, 556 U.S. at 678).

2 In considering whether the complaint is sufficient to state a claim, all allegations of material  
3 fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit*  
4 *P'ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although  
5 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must  
6 provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555  
7 (2007). A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is  
8 clear the complaint's deficiencies could not be cured through amendment, a *pro se* plaintiff should  
9 be given leave to amend the complaint with notice regarding the complaint's deficiencies. *Cato v.*  
10 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

11 Here, the Plaintiff submitted to the Court a complaint dated October 16, 2015. (ECF No. 1-  
12 1.) The document consists of a caption page naming Plaintiff and the Commissioner of Social  
13 Security and is signed by Plaintiff. (*Id.*) The document does not include any factual allegations  
14 written by the Plaintiff. (*See id.*) However, the following documents are attached to the caption  
15 page of the document: (1) Order of the Appeals Council for the Social Security Administration  
16 dated August 18, 2015; (2) a Notice of Appeals Council Action dated August 18, 2015; and (3) a  
17 Notice of Decision – Unfavorable from the Social Security Administration Office of Disability  
18 Adjudication and Review dated May 22, 2014. (*Id.* at 2-25.) Although the complaint does not  
19 include any factual allegations, based on the attachments, the Court understands Plaintiff to be  
20 attempting to submit a complaint for judicial review of a decision by the Commissioner of Social  
21 Security. Without written factual allegations stating the reasons why Plaintiff challenges the Social  
22 Security Administration's decision denying benefits, the Court cannot evaluate whether Plaintiff's  
23 complaint states a claim against the Commissioner of Social Security. The Court therefore will  
24 dismiss Plaintiff's complaint without prejudice for the Plaintiff to file an amended complaint.

25 If Plaintiff chooses to file an amended complaint, the document must be titled "Amended  
26 Complaint." The amended complaint must state the nature of Plaintiff's disability, when Plaintiff  
27 claims he became disabled, and when and how he exhausted his administrative remedies. The  
28 amended complaint also must contain a short and plain statement identifying the nature of

1 Plaintiff's disagreement with the determination made by the Social Security Administration and  
2 show that Plaintiff is entitled to relief. Although the Federal Rules of Civil Procedure adopt a  
3 flexible pleading standard, Plaintiff still must give the Commissioner of Social Security fair notice  
4 of the reasons Plaintiff is seeking review of the Commissioner's decision.

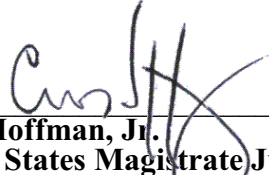
5 Additionally, Plaintiff is advised that if he files an amended complaint, the original  
6 complaint (ECF No. 1-1) no longer serves any function in this case. As such, the amended  
7 complaint must be complete in and of itself without reference to prior pleadings or other  
8 documents. The Court cannot refer to a prior pleading or other documents to make Plaintiff's  
9 amended complaint complete.

10 IT IS THEREFORE ORDERED that Plaintiff's Application for Leave to Proceed *In Forma*  
11 *Pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to pay the filing fee in this  
12 action. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
13 prepayment of any additional fees or costs or the giving of a security for fees or costs. This Order  
14 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at  
15 government expense.

16 IT IS FURTHER ORDERED that the Clerk of the Court shall file Plaintiff's complaint  
17 (ECF No. 1-1).

18 IT IS FURTHER ORDERED that the Complaint (ECF No. 1-1) is DISMISSED without  
19 prejudice for failure to state a claim upon which relief can be granted, with leave to amend. If  
20 Plaintiff chooses to file an amended complaint, Plaintiff must file the amended complaint within 30  
21 days from the date of this Order. Failure to comply with this Order may result in a  
22 recommendation that this action be dismissed.

23  
24 DATED: October 27, 2015

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26   
27 C.W. Hoffman, Jr.  
28 United States Magistrate Judge